

Revisions to City of Rochester Floodplain Standards

CHAPTER 60

60.110 AUTHORITY

The 1965 Laws of Minnesota, Chapter 462, authorizes the municipality to administer planning and zoning activities, establish a Zoning Board of Appeals, enact official controls, and provide penalties for violation thereof. Chapter 103F of Minnesota Statutes authorizes minimum standards and criteria for the management of "Shoreland" and "Floodplain" Areas within the City of Rochester.

60.200 DEFINITIONS

AO ZONE: An area of shallow flooding shown on the City of Rochester's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and undetermined, and where low velocity flow may be evident.

BASEMENT: Any area of a structure, including crawl spaces, having its floor or base subgrade (below ground level) on all four sides, regardless of the depth of excavation below ground level.

BASE FLOOD: the flood having a one percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION: The elevation of the "regional flood." The term "base flood elevation" is used in the flood insurance study.

COMMISSIONER: "Commissioner" means the commissioner of the Department of Natural Resources.

CRITICAL FACILITIES: Facilities necessary to a community's public health and safety, those that store or produce highly volatile, toxic or water-reactive materials, and those that house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical facilities include hospitals, correctional facilities, schools, daycare facilities, nursing homes, fire and police stations, wastewater treatment facilities, public electric utilities, water plants, fuel storage facilities, and waste handling and storage facilities.

FLOOD FRINGE: That portion of the flood plain outside of the floodway. Flood fringe is synonymous with the term "floodway fringe" used in the Flood Insurance Study.

FLOOD-PROOFING: Any combination of structural and nonstructural additions, changes or adjustments to structures and properties which reduce or eliminate flood damage to real estate, water and sanitary facilities, structures and their contents.

FLOODPLAIN: The beds proper and the areas adjoining a wetland, lake or watercourse which have been or hereafter may be covered by the regional flood.

FLOOD PROTECTION ELEVATION: A level one (1) foot above the regional (100 year frequency) flood plus any increase in flood level adopted by DNR study that would be caused by the future floodplain development outside the floodway.

FLOOD, REGIONAL: A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the one hundred (100) year recurrence interval. Regional flood is synonymous with the term "base flood" used in the Flood Insurance Study.

FLOOD, STANDARD PROJECT: A hypothetical flood estimated and mapped by the U.S. Corps of Engineers, representing the critical flood runoff volume and peak discharge that may be expected from the most severe combination of meteorological and hydrologic conditions that are considered reasonable characteristic of the Rochester region, excluding rare combinations.

FLOODWAY: The minimum channel of a watercourse and those portions of the flood plain adjoining the channel that are reasonably required to carry or store the regional flood discharge.

FLOOD INSURANCE RATE MAP: An official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

FLOODPROOFING: a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

FLOOD, REGIONAL: A flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur with an average frequency in the magnitude of a one hundred (100) year recurrence interval.

FP-1, FP-2, FP-3, FP-4, FP-5: Different classifications of flood-proofing measures as defined by the state building code.

FREEBOARD: A factor of safety usually expressed in feet above a design flood level for flood protective or control works. (Freeboard is intended to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected flood or floodway condition such as wave action, bridge opening and floodway obstructions resulting from debris or ice, and the hydrologic effects of urbanization of the watershed).

LETTER OF MAP AMENDMENT (LOMA): A document issued by the Federal Emergency Management Agency providing documentation for findings that have been made showing that single a lot or single structure is not located in a Special Flood Hazard Area as defined in 44 CFR 59.

LOWEST FLOOR: the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not

built so as to render the structure in violation of the applicable non-elevation design requirements of 44 Code of Regulations, Part 60.3.

MANUFACTURED HOME: A building, fabricated in an off-site facility for installation or assembly at the building site, transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width or forty (40) feet or more in length, or when erected is 320 or more square feet in size, and which is built on a permanent chassis and designed to be used as a dwelling for one family, with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical system contained therein, and is certified as constructed in compliance with the “manufactured home building code” as established under Minnesota Statutes, chapter 327. For calculations of permitted densities in this ordinance, a manufactured home shall be considered as one dwelling unit.

OBSTRUCTION: Any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory flood plain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

ORDINARY HIGH WATER LEVEL: Means the boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

REGULATORY FLOOD PROTECTION ELEVATION: A level not less than one (1) foot above the regional (100 year frequency) flood plus any increase in flood elevations that would be caused by the future flood plain development outside the floodway. In Zone AO, the RFPE is established by adding the depth number specified in feet for the Zone AO on the Flood Insurance Rate Maps adopted in Section 62.800 of this ordinance to the highest adjacent grade at the structure’s proposed location on the ground.

REPETITIVE LOSS: Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

SPECIAL FLOOD HAZARD AREA: A term used for flood insurance purposes synonymous with “One Hundred Year Floodplain.”

START OF CONSTRUCTION – includes substantial improvement, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not

occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural

SUBSTANTIAL DAMAGE: means damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT: within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
- b) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this ordinance, “historic structure” is as defined in 44 Code of Federal Regulations, Part 59.1.

60.310 ZONING DISTRICTS:

For the purpose of this ordinance, all land and water areas in the City of Rochester are hereby classified into zoning districts which shall be designated as shown in the chart below. To differentiate those areas of the City subject to more traditional zoning controls from those areas subject to performance-oriented controls, all zoning districts are grouped under one of two umbrella classifications entitled “Performance Districts” or “Established Districts”.

PERFORMANCE DISTRICTS	
SYMBOL	DISTRICT TITLE
D	Developing District
CDC	Central Development Core
CN	Core Neighborhood Districts
ESTABLISHED DISTRICTS	
R-Sa	Mixed Single Family Overlay
R-1	Mixed Single Family
R-1x	Mixed Single Family Extra
R-2	Low Density Residential
R-3	Medium Density Residential
R-4	High Density Residential
B-1	Restricted Commercial
B-2	Pedestrian Oriented Restricted Commercial
B-4	General Commercial
B-5	Residential Commercial
M-1	Mixed Commercial-Industrial

M-2	Industrial
M-3	Low Intensity Mixed Commercial Industrial
AG	Agricultural
MRD	Mixed Redevelopment
FF	Flood Fringe
FW	Floodway
FP	Flood Prone
PUD	Planned Unit Development
SD	Special District
H	Holding Zone
I	Interim Zone

Where the symbol for a zoning district is used in the ordinance, it has the same meaning as the entire classification title.

60.324 Flood Related Districts: The flood related districts are a set of three districts established to guide envelopment within the flood plain consistent with current flood plain management practices. The specific purposes and regulations for the Flood Fringe, Floodway, and Flood Prone districts are found in Article 62.800 of the Rochester Code of Ordinances.

60.350 DESIGNATION OF ANNEXED PROPERTY

60.3501 Designation of Annexed Property: Flood Way and Flood Fringe:

The Flood Insurance Rate Map panels adopted by reference into Section 62.810 may include floodplain areas that lie outside of the corporate boundaries of the City of Rochester at the time of adoption of this ordinance. If any of these floodplain areas are annexed into the City of Rochester after the date of adoption of this ordinance, the newly annexed floodplain lands will be subject to the provisions of this ordinance immediately upon the date of annexation. Flood Insurance Rate Maps that are not listed in Section 62.810 but that contain newly annexed land shall automatically be adopted as part of this code and zoning district designation shall be determined as stated in this section.

Lands designated as Floodway on the Flood Insurance Rate Maps for Olmsted County shall be designated Floodway District (FW) upon annexation. Lands designated as Flood Fringe A (FFA) District under the Olmsted County Zoning Ordinance shall be designated as Flood Fringe (FF) District upon annexation. Lands designated as Flood Fringe B (FFB) District under the Olmsted County Zoning Ordinance shall be designated as Flood Prone (FP) District upon annexation. The designation of a floodplain district under this ordinance, both Floodway and the Special Flood Hazard Areas shall be based on the most current Flood Insurance Rate Maps and any amendments thereto.

60.410 VARIANCE:

60.417 Findings for Variances

Subd. 3. The Board shall under no circumstances grant a variance that will allow a use otherwise not permitted within the zoning district or any variance of the elevation or levels for flood protection. The Board shall not grant a variance to a numerical standard where that standard is incorporated into the definition of a use (for example, the definition of a family as including “a group of not more than five persons, some or all of whom are not related by blood, marriage or adoption,” or the definition of

a duplex as “a building on a single lot containing two dwelling units”).

60.418 VARIANCES TO THE FLOOD DISTRICT REGULATIONS

Variances shall be processed according to the Type III review procedure, with the Phase III hearing process utilized. The Board of Appeals shall substitute for the Commission in the Phase III process. The Board may consider the factors listed in Section 62.824 for conditional use permits in reviewing any variance application.

60.4181 Consideration: No variance to a floodplain regulation under this article shall be authorized unless all of the following facts and conditions are considered:

- 1) Variances must not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- 2) Variances may only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, not mere inconvenience; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- 3) Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 4) No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area, or permit standards lower than those required by State law.

60.4182 Upon filing of an application for a variance to the provisions of this article, the zoning administrator shall notify the applicant in writing of the following:

- 1) That the issuance of a variance to construct a structure below the flood protection elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- 2) Such construction below the flood protection elevation increases risks to life and property.

Such notification must be maintained with a record of all variance actions.

60.4183 Following approval of a variance to the provisions of this article, the zoning administrator shall:

- 1) Maintain a record of the variance action, including the justification for its issuance, and report such variances issued in his annual report to the Administrator of the National Flood Insurance Program, when requested by the Federal Emergency Management Agency.

- 2) Submit a copy of the decision and its justification for issuance to the Commissioner of Natural Resources within ten (10) days of such action.

CHAPTER 61

61.117 REQUIREMENTS FOR ALL FLOODPLAIN DISTRICTS

- A. Permit Required. A permit must be obtained from the Zoning Administrator to verify a development meets the floodplain standards outlined in this ordinance prior to conducting the following activities:
 1. The erection, addition, modification, rehabilitation, or alteration of any building, structure, or portion thereof. Normal maintenance and repair also requires a permit if such work, separately or in conjunction with other planned work, constitutes a substantial improvement as defined in this ordinance.
 2. The use or change of use of a building, structure, or land.
 3. The construction of a dam, on-site septic system, or fence, although a permit is not required for a farm fence as defined in this ordinance.
 4. The change or extension of a nonconforming use.
 5. The repair of a structure that has been damaged by flood, fire, tornado, or any other source.
 6. The placement of fill, excavation of materials, or the storage of materials or equipment within the floodplain.
 7. Relocation or alteration of a watercourse (including new or replacement culverts and bridges), unless a public waters work permit has been applied for.
 8. Any other type of “development” as defined in this ordinance.
- B. Building Sites. If a proposed building site is in a floodplain, all new construction and substantial improvements (including the placement of manufactured homes) must be:
 1. Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 2. Constructed with materials and utility equipment resistant to flood damage;
 3. Constructed by methods and practices that minimize flood damage; and
 4. Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- C. Certification. The applicant is required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance. Floodproofing measures must be certified by a registered professional engineer or registered architect. Accessory structures designed in accordance with Section 6.212 are exempt from certification, provided sufficient documentation is provided.

- D. Certificate of Zoning Compliance for a New, Altered, or Nonconforming Use. No building, land or structure may be occupied or used in any manner until a certificate of zoning compliance has been issued by the Zoning Administrator stating that the use of the building or land conforms to the requirements of this ordinance.
- E. Record of First Floor Elevation. The Zoning Administrator must maintain a record of the elevation of the lowest floor (including basement) of all new structures and alterations or additions to existing structures in the floodplain. The Zoning Administrator must also maintain a record of the elevation to which structures and alterations or additions to structures are floodproofed.
- F. Notifications for Watercourse Alterations. Before authorizing any alteration or relocation of a river or stream, the Zoning Administrator must notify adjacent communities. If the applicant has applied for a permit to work in public waters pursuant to Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to the Chicago Regional Office of the Federal Emergency Management Agency (FEMA).
- G. Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations. As soon as is practicable, but not later than six months after the date such supporting information becomes available, the Zoning Administrator must notify the Chicago Regional Office of FEMA of the changes by submitting a copy of the relevant technical or scientific data.

61.225 Findings for Land Subdivision:

- O. Any land located within the Special Flood Hazard Area as shown on the currently adopted Flood Boundary and Floodway Maps of Flood Insurance Study, Rochester, Minnesota, prepared by the Federal Emergency Management Agency, is determined to be suitable for its intended use and that the proposed subdivision adequately mitigates the risks of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, or any other floodplain related risks to the health, safety or welfare of the future residents of the proposed subdivision in a manner consistent with this ordinance.
- R. All lots within the floodplain districts are able to contain a building site outside of the Floodway District at or above the regulatory flood protection elevation.
- S. For all subdivisions in the floodplain, the Floodway and Flood Fringe District boundaries, the regulatory flood protection elevation and the required elevation of all access roads are clearly labeled on all required subdivision drawings and platting documents.
- T. All subdivisions must have road access both to the subdivision and to the individual building sites no lower than two feet below the regulatory flood protection elevation.
- U. Subdivision proposals must be reviewed to assure that:
 - 1. All such proposals are consistent with the need to minimize flood damage with the floodplain area;

2. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure of flood hazard.

CHAPTER 62

62.386 Recreational Uses:

1) **Campgrounds and Recreational Vehicle Parks:** The density of proposed developments shall not exceed 20 sites per acre. Spaces for trailers shall be at least 25 feet wide, and a 30 foot separation between any designated site and a residential zoning district boundary shall be maintained. Recreational space equal to 10 percent of the site area shall be provided, with no single area smaller than 800 square feet in size. Submittal information shall include plans for utilities, sanitary facilities, bathing facilities and the waste disposal system. Recreational vehicle parks located in the Flood Fringe, Flood Prone and Floodway Districts are subject to the provisions of 62.800.

62.800 FLOOD DISTRICTS AND INTENT:

The intent of the flood district regulations is to guide development in the flood hazard areas of Rochester consistent with the flood threat, in order to minimize loss of life and property, disruption of commerce and governmental services, extraordinary public expenditure for public protection and relief, impairment of the tax base and interruption of transportation and communication, all of which adversely affect the public health, safety and general welfare. Flood hazard regulations are intended to minimize losses and disruptions.

The flood district regulations are adopted to comply with the rules and regulations of the National Flood Insurance Program codified as 44 Code of Federal Regulations Parts 59 -78, as amended, so as to maintain the community's eligibility in the National Flood Insurance Program.

The regulations are also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

62.801 Flood Fringe District Purpose: The purpose of the flood fringe district is to insure that uses and structures within the district are properly flood protected, consistent with accepted principles and standards for flood protection, resulting in developments which will suffer minimal damage from flooding and are of such a nature so as to have a minimal effect on the ability of the flood plain to discharge flood waters.

62.802 Floodway District Purpose: The purpose of the floodway district is to assure that adequate space is retained within the channel and adjoining flood plain to carry and discharge the regional flood, and to restrict or prohibit uses which are dangerous to health or safety, or result in economic loss, in times of flood.

62.803 Flood Prone District Purpose: The purpose of the flood prone district is to guide development in generally undeveloped areas of the flood plain in such a manner so as to reduce the loss of flood storage volume in the flood plain, and to avoid increases in downstream flood levels and in the velocity of flood waters.

62.810 DESIGNATION:

Each individual flood district represents a set of regulations superimposed upon the existing zoning districts, superseding existing underlying regulations only to the extent that developments must meet the additional standards of this chapter as well as those of the underlying district in order to be in compliance with this ordinance.

The Flood Fringe District (FF), the Floodway District (FW), and the Flood Prone District (FP) are identified upon the zoning map, and reference to the status of any property located in one of the flood related districts is made by the District symbol (FF, FW, or FP) being postfixed to a use district symbol (examples R-1/FF, B-4/FW, M-2/FP). (Refer to 60.350, Designation of Annexed Property: Floodway, Flood Fringe, and Flood Plain – Mitigation Districts regarding floodplain in newly annexed areas.)

To aid in the identification and designation of properties in the flood related districts, certain materials are attached and hereby adopted by reference and declared to be part of this ordinance. These materials include the Flood Insurance Study for Olmsted County, Minnesota, and Incorporated Areas, and the Flood Insurance Rate Map for Olmsted County and Incorporated Areas, all dated April 19, 2017 and prepared by the Federal Emergency Management Agency, including the following panels:

- 27109C0141F
- 27109C0142F
- 27109C0143E
- 27109C0144F
- 27109C0153F
- 27109C0154F
- 27109C0155E
- 27109C0158E
- 27109C0161F
- 27109C0162F
- 27109C0163F
- 27109C0164F
- 27109C0166F
- 27109C0168F
- 27109C0169E
- 27109C0282F
- 27109C0301F
- 27109C0302F
- 27109C0304E
- 27109C0306F
- 27109C0307E
- 27109C0313E

62.811 Designation of Floodway District (FW): The provisions in this chapter relating to the floodway district shall apply to all lands designated as floodway on the Flood Insurance Rate Map adopted in Section 62.810. The Floodway District also includes those areas designated as Zone A (that do not have a floodway designated) on the Flood Insurance Rate Map.

For lakes, wetlands and other basins, the Floodway District includes those areas that are at or below the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

62.812 Designation of Flood Fringe District: The Flood Fringe District includes those areas within Zone AE and designated as floodway fringe, or within Zone AO on the Flood Insurance Rate Map adopted in this section, and were within the corporate boundaries of the city prior to November 3, 1980.

For lakes, wetlands and other basins (that do not have a floodway designated), the Flood Fringe District includes those areas designated as Zone AE on the Flood Insurance Rate Map panels adopted in this section that are below the 1% annual chance (100-year) flood elevation but above the ordinary high water level as defined in Minnesota Statutes, Section 103G.005, subdivision 14.

62.813 Designation of Flood Prone District (FP): The Flood Prone District includes those areas designated as floodway fringe on the Flood Insurance Rate Map adopted in this section, as being within Zone AE but being located outside of the floodway, and were annexed on or after November 3, 1980, except as determined by the provisions of 60.3501.

62.814 Warning and Disclaimer of Liability: The degree of flood protection intended to be provided by the zoning code is considered reasonable for regulatory purposes and is based on engineering and other specific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams or bridge openings restricted by debris. The zoning code does not imply that areas outside of designated flood plain districts or land uses permitted within such districts will always be totally free from flooding or flood damages. Nor shall the zoning code create a liability on the part of, or be a cause of action against the City of Rochester or any employee thereof for any flooding or flood damages that may result from reliance on the zoning code.

62.815 Reclamation: Nothing herein shall be so construed as to prohibit the lawful rehabilitation or reclamation of any lands outside of the floodway, provided that no filling, draining, construction of levees or other improvements intended to eliminate or reduce the danger of the flood or erosion shall be commenced until first reviewed and authorized by the zoning administrator and the Commissioner, and, if revisions to floodplain maps or designations are proposed, by the Federal Emergency Management Agency.

62.816 Right of Passage: No person may obstruct the passage of water and watercraft nor restrict the lawfully permitted use by the public of the bed, banks, water and floodway of any stream within the City of Rochester.

62.817 FLOODPLAIN LIMITS: Where a conflict exists between the floodplain limits illustrated on the official zoning map and actual field conditions including the natural or pre-existing grades, the flood elevations shall be the governing factor in locating the regulatory floodplain limits.

62.818 Delineation of Floodway in A Zones: In A zones without a floodway, the floodway may be delineated using the following procedures. Areas identified through these procedures as flood fringe may then be reclassified as Flood Fringe District, and will then be subject to the requirements

of Sections 62.840 and 62.860, respectively. The area determined to be Floodway shall be governed by Section 62.850.

1. Upon receipt of an application for a permit or other approval, the Zoning Administrator must obtain, review and reasonably utilize any regional flood elevation and floodway data available from a federal, state, or other source.
2. If regional flood elevation and floodway data are not readily available, the applicant must furnish additional information, as needed, to determine the regulatory flood protection elevation and whether the proposed use would fall within the Floodway or Flood Fringe District. Information must be consistent with accepted hydrological and hydraulic engineering standards and the standards in Subpart 3 below.
3. The determination of floodway and flood fringe must include the following components, as applicable:
 - (a) Estimate the peak discharge of the regional (1% chance) flood.
 - (b) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas.
 - (c) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than one-half (0.5) foot. A lesser stage increase than 0.5 foot is required if, as a result of the stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries.
4. The Zoning Administrator will review the submitted information and assess the technical evaluation and the recommended Floodway and/or Flood Fringe District boundary. The assessment must include the cumulative effects of previous floodway encroachments. The Zoning Administrator may seek technical assistance from a designated engineer or other expert person or agency, including the Department of Natural Resources. Based on this assessment, the Zoning Administrator may approve or deny the application.

62.820 PROCEDURES:

The requirements in this section shall supplement the procedural requirements of the underlying zoning district in any flood district. Conditional Use Permits shall be processed under the Type III Review, with a Phase III hearing process utilized.

62.821 Amendments to a Flood District Designation: The Council may initiate an amendment to a flood district boundary upon request from a property owner. The procedures for processing an amendment to this ordinance, as defined in 60.332, shall be followed. The applicant shall submit all necessary technical documentation to assist the Council in their review of the petition. The flood plain designation on the official zoning map shall not be removed from flood plain areas unless it can be shown that the designation is in error or that the area has been filled to or above the elevation of the regional flood and is contiguous to lands outside the flood plain. Special exceptions to this rule may be permitted by the

Commissioner of Natural Resources if the commissioner determines that, through other measures, lands are adequately protected for the intended use.

All amendments to the flood plain provisions of this zoning code, including amendments to the official zoning map, must be submitted to and approved by the Commissioner of Natural Resources prior to adoption. Changes in the official zoning map must meet the Federal Emergency Management Agency's (FEMA) Technical Conditions and Criteria and must receive prior FEMA approval before adoption. The Commissioner of Natural Resources must be given 10-days written notice of all hearings to consider an amendment to the zoning code and said notice shall include a draft of the amendment or technical study under consideration.

62.822 Conditional Use Permits - Submission Requirements: Applications for Conditional Use Permits required by this chapter shall include the information required by Paragraph 61.144 and the following information:

- 1) Plans in triplicate drawn to scale showing the nature, location, dimensions and elevations of the lots, existing or proposed structures, fill, storage of materials, flood-proofing measures, and the relationship of the above to the locations of the stream channel. One set of plans shall be transmitted to a designated engineer or other expert person or agency for technical assistance, where necessary, in evaluating the proposed project in relation to flood heights and velocities, the seriousness of flood damage to the use, the adequacy of the plans for protection, and other technical matters.
- 2) Specifications for building construction and materials, flood-proofing, filling, dredging, grading, channel improvement, storage of materials, water supply and sanitary facilities.
- 3) Any additional information deemed necessary by the Commission to determine the suitability of the particular site for the proposed use.

62.823 Notifications: Notification procedures for conditional uses, defined in 61.143, shall also be followed for conditional uses in the Flood Districts. In addition, a copy of the application and written notice shall be mailed to the Commissioner sufficiently in advance so that the Commissioner will receive at least ten (10) days notice of the hearing.

62.824 Conditional Use Permits – Standards for Approval. When deciding on conditional use permits in any flood district, the following factors, in addition to the standards in Section 61.146, must be considered:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments.
- B. The danger that materials may be swept onto other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary condition.
- D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

- E. The importance of the services provided by the proposed facility to the community.
- F. The need for a waterfront location for the facility.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the comprehensive flood plain plan and management program for the area.
- J. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- L. Such other factors which are relevant to the purposes of Section 62.800.

62.825 Decisions: A copy of all decisions granting conditional use permits in the Flood Districts shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.

62.826 Submission Requirements, Lands Removed from Special Flood Hazard Area: Where an applicant can provide documentation that a Letter of Map Amendment (LOMA) has been issued by the Federal Emergency Management Agency relative to a lot identified on the FIRM as being in a flood district, the submission requirements shall be those applicable in the underlying zoning district.

62.827 Flood-Proofing Certification: The applicant shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill, and building elevations were accomplished in compliance with the provisions of this ordinance. A registered professional engineer or architect shall certify that the flood-proofing methods are adequate to withstand the flood depth, pressures, velocities, impact and uplift forces. Where a nonconforming structure is extended or substantially altered the certificate of zoning compliance shall specifically state the manner in which the nonconforming use or structure differs from the provisions of this ordinance.

62.828 Records: The zoning administrator shall maintain a record of the lowest floor (including basement) elevation of all new structures and alterations or additions to existing structures in any of the flood districts. A record of the flood-proofing measures utilized shall also be maintained.

62.829 State and Federal Permits: Prior to granting a zoning certificate or processing an application for a conditional use permit or variance required by this Article, the zoning administrator shall determine that the applicant has obtained all necessary state and federal permits pertaining to flood-proofing and flood protection measures.

62.830 USES PERMITTED:

The regulations within this article establish those uses which are permitted in each of the flood districts, subject to the further restriction that any use contemplated shall also be permitted in the underlying zoning district. It shall be a misdemeanor for any person to establish a use in a flood district which is not otherwise permitted in that district by the following sections, or which is not permitted in the underlying zoning district, and for any person to do any grading or filling in the **flood plain** without first obtaining all necessary permits and approvals.

62.831 Permitted Uses, Floodway and Flood Prone Districts: Permitted uses are the following uses which have a low flood damage potential and do not obstruct flood flows. These uses are permitted within the Floodway and Flood Prone Districts to the extent that they are not prohibited by the underlying zoning district or any other ordinance and provided they do not require structures, fill, or storage of materials or equipment except as permitted in 62.800. In addition, no use shall adversely affect the capacity of the channel or floodways of any tributary to the main stream, or of any drainage ditch or other drainage facility.

- 1) Agricultural uses such as: general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.
- 2) Industrial-commercial uses such as: loading areas, parking areas, billboards, airport landing strips.
- 3) Private and public recreational uses such as: golf courses, tennis courts, driving ranges, picnic grounds, boat launching ramps, swimming area, parks, wildlife and nature preserves, fishing areas, recreational trails.
- 4) Residential uses such as: lawns, gardens, parking areas, and recreation areas.

5.) Channel Modifications requiring a DNR permit where there is no change in the flood profile.

Any facility that will be used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

62.832 Uses in the Flood Fringe District: Uses permitted or conditionally permitted in the Flood Fringe District are the same as those identified in the underlying zoning district, subject to meeting the construction standards established for the Flood Fringe District in Section 62.840.

62.833 Conditional Uses, Floodway District: The following uses involving structures (temporary or permanent), fill, or the storage of materials or equipment, are permitted in the Floodway District only after the issuance of Type III Conditional Use permit as provided for in Section 62.820.

- 1) Structures accessory to open space or conditional uses, in accordance with Paragraph 62.852.
- 2) Placement of fill in accordance with Paragraph 62.851.
- 3) Extraction of sand, gravel, and other minerals.
- 4) Marinas, boat rentals, docks, and water control structures.

5) Railroads, streets, bridges, utility transmission lines and pipelines, provided that the Department of Natural Resources' Area Hydrologist is notified at least ten days prior to issuance of any permit.

6) Storage yards for equipment, machinery or materials, in accordance with Paragraph 62.854.

7) Other uses similar in nature to uses described in Paragraph 62.831 or this paragraph which are consistent with the provisions set out in 62.802.

62.834 Conditional Uses, Flood Prone District: In the Flood Prone Districts, uses permitted in the underlying zoning district are allowed subject to the issuance of a Type III Conditional Use Permit as provided for in Section 62.820 and, in addition, are subject to the following provisions:

1) All developments are subject to the applicable provisions of Section 62.840, except those uses established subject to the alternate construction standards of Paragraph 62.844 and shall also meet the further regulations of Section 62.860 before a permit may be issued.

62.835 Adverse Affect on Unspecified Floodway: Flood plain development should not adversely affect the hydraulic capacity of the channel and adjoining flood plain of any tributary watercourse or drainage system where a floodway or other encroachment limit has not been specified on the Official Zoning Map.

62.836 Critical Facilities: Critical Facilities, as defined in 60.200, are prohibited in all floodplain districts.

62.840 CONSTRUCTION STANDARDS, FLOOD FRINGE DISTRICT:

Uses located in the Flood Fringe District, to the extent that they are not prohibited by any other portion of this ordinance, shall be constructed as regulated by the following paragraphs and in such a manner so as to not adversely affect the capacity of any public water or any other drainage facility or system.

62.841 Standard for Principal Buildings: The following standards shall apply to the construction of principal buildings in the Flood Fringe District:

1) **Dwellings:** New dwellings shall be constructed on fill so that the lowest floor (including basement) is at or above the flood protection elevation. The finished fill elevation shall be no lower than one (1) foot below the flood protection elevation and shall extend at such elevation at least fifteen (15) feet beyond the limits of any structure or building thereon. Residences that do not have vehicular access at or above an elevation not more than two (2) feet below the flood protection elevation shall not be permitted. If a variance to the access requirement is granted, the Board of Appeals must specify limitations on the period of use or occupancy of the structure for times of flooding and only after determining that adequate flood warning time and local flood emergency response procedures exist.

2) **Dwellings in the AO Zone:** New dwellings shall be constructed on fill so that the lowest floor (including basement) is elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Rochester Flood Insurance Rate Map. The finished fill elevation shall extend at such elevation at least fifteen (15) feet beyond the limits of any structure or

building thereon. There must be adequate drainage paths around structures on slopes to guide floodwaters around and away from existing or proposed structures or additions.

- 3) **Non-Residential Uses:** New structures shall be elevated so that their lowest floor (including basement) is at or above the flood protection elevation. The finished fill elevation shall be no lower than one (1) foot below the flood protection elevation.
- 4) **4) Non-Residential Uses in the AO Zone:** New structures shall be constructed on fill so that the lowest floor (including basement) is elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Rochester Flood Insurance Rate Maps, or together with attendant utility and sanitary facilities be completely flood-proofed in accordance with the State Building Code to the FP-I or FP-2 classification without the utilization of dikes, dams or levee. There must be adequate drainage paths around structures on slopes to guide floodwaters around and away from existing or proposed structures or additions.

62.842 Standards for Public Works: The following standards shall apply to the construction of new public works in the Flood Fringe District:

1) **Waste Treatment and Flood Control Structures:** No new construction, addition or modification to existing waste treatment facilities shall be permitted within the flood fringe unless emergency plans and procedures for action to be taken in the event of flooding are prepared, filed with, and approved by the Minnesota Pollution Control Agency. The emergency plans and procedures must provide for measures to prevent introduction of any pollutant or toxic material in to the flood waters.

2) **Utilities, Railroad Tracks, Streets and Bridges:** Public utility facilities, roads, railroad tracks, and bridges within the Flood Fringe District shall be designed to minimize increase in flood elevations and shall be compatible with local comprehensive flood plain development plans.

Protection to the flood protection elevation shall be provided where failure or interruption of these public facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area.

Where failure or interruption of services would not endanger life or health, a lesser degree of protection may be provided for minor or auxiliary roads, railroads, or utilities.

62.843 Standards for Accessory Uses and Structures: The following standards shall apply to the construction of accessory structures and the use of land for accessory purposes:

- 1) **Accessory Structures:** Such structures shall be constructed on fill so that the lowest floor is at or above the flood protection elevation or may be permitted below the flood protection elevation provided that such structures are:
 - a) not designed for human habitation;

- b) **Designed to have low flood damage potential;**
- c) constructed and placed on the building site so as to offer the minimum resistance to the flood or floodwaters
- d) **As an alternative to elevation on fill, accessory structures that constitute a minimal investment and that do not exceed 500 square feet for the outside dimension at ground level may be internally flood proofed to the FP-3 or FP-4 standards in accordance with the State Building Code. To meet this requirement, detached garages must be used solely for parking of vehicles and limited storage. All such structures must meet the following standards:**
 - 1) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - 2) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.
 - 3. The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls.
 - 4. Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.
- 2) **Storage of Materials:** The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal or plant life is prohibited. Storage of other materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the zoning administrator.
- 3) **Accessory Land Uses:** Accessory land uses for non-residential uses, such as storage yards and parking lots, that are at elevations below the flood protection elevation shall not be permitted without a flood warning system that provides adequate time for evacuation of the area if the area is inundated to a depth and velocity such that the depth (in feet) multiplied by the velocity (in feet per second) would exceed a product of four upon occurrence of the regional (1% chance) flood.

62.844 Alternate Construction Standards for Conditional Uses: Alternate standards for the construction of residential and non-residential conditional uses are as follows:

- 1) **Residential Uses:** Where existing streets, utilities, or small lot size preclude the use of fill, other methods of elevating the first floor (including basement) above the flood protection elevation may be authorized by the issuance of a Type III Conditional Use Permit in accordance with Sections

61.140 and 62.820. These alternative methods may include the use of stilts, pilings, parallel walls, etc., or above-grade enclosed areas such as crawl spaces or tuck-under garages. The base or floor of an enclosed area shall be considered above-grade and not a structure's basement or lowest floor if: 1) the enclosed area is above-grade on at least one side of the structure; 2) it is designed to internally flood and is constructed with flood resistant materials; and 3) it is used solely for parking of vehicles, building access or storage. The above-noted alternative elevation methods are subject to the following additional standards:

- a) The structure's design and as-built condition must be certified by a registered professional engineer or architect as being in compliance with the general design standards of the State Building Code and, specifically, that all electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities must be at or above the Regulatory Flood Protection Elevation or be designed to prevent flood water from entering or accumulating within these components during times of flooding.
- b) Above-grade, fully enclosed areas such as crawl spaces or tuck-under garages must be designed to internally flood and the design must stipulate:
 - 1) The minimum area of openings in the walls where internal flooding is to be used as a flood proofing technique. There shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The automatic openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding unless a registered professional engineer or architect certifies that a smaller net area would suffice. When openings are placed in a structure's walls to provide for entry of flood waters to equalize pressures, the bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters without any form of human intervention.
 - 2) That the enclosed area will be designed of flood resistant materials in accordance with FP-3 or FP-4 classifications in the State Building Code and shall be used solely for building access, parking of vehicles or storage.

2)Non-Residential Uses: All areas of non-residential structures, including basements, to be placed below the Regulatory Flood Protection Elevation shall be flood proofed in accordance with the structurally dry flood proofing classifications in the State Building Code. Structurally dry flood proofing must meet the FP-1 or FP-2 flood proofing classification in the State Building Code, without the use of dikes, dams or levees, and this shall require making the structure watertight with the walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Structures flood proofed to the FP-3 or FP-4 standards shall not be permitted. Whenever the zoning administrator determines that a particular use may constitute an unusual hazard in the flood fringe, he may require the issuance of a Type III conditional use permit as provided in Section 62.820.

62.846 Additional Development Standards:

- 1) **Manufacturing and Industrial Uses:** Manufacturing and industrial buildings, structures and appurtenant works shall be protected to the flood protection elevation. Measures shall be taken to minimize interference with normal plant operations, especially for streams having prolonged flood durations. In considering permit applications, due consideration shall be given to needs of an industry whose business requires that it be located in flood plain areas.
- 2) **Fill:** Fill shall be properly compacted and the slopes shall be properly protected by the use of riprap, vegetative cover or other acceptable method.) Permanent sand and gravel operations and similar uses must be covered by a long term site development plan as approved under other provisions of this ordinance.

The cumulative placement of fill where at any one time in excess of one-thousand (1000) cubic yards of fill is located on the parcel shall be allowable only as a conditional use, unless said fill is specifically intended to elevate a structure in accordance with Section 62.840 of the zoning code.

- a) When at any time more than 1,000 cubic yards of fill or other similar material is located on a parcel for such activities as on-site storage, landscaping, sand and gravel operations, landfills, roads, dredge spoil disposal or construction of flood control works, an erosion/sedimentation control plan must be submitted unless the community is enforcing a state approved shoreland management ordinance. In the absence of a state approved shoreland management ordinance, the plan must clearly specify methods to be used to stabilize the fill on site for a flood event at a minimum of the 100 year or regional flood event. The plan must be prepared and certified by a registered professional engineer or other qualified individual acceptable to the zoning administrator. The plan may incorporate alternative procedures for removal of the material from the flood plain if adequate flood warning time exists.

62.847 Adverse Effects on Unspecified Floodway: section moved to 62.835

62.848 Garbage and Solid Waste Disposal: There shall be no disposal of garbage or solid waste materials within Flood Fringe areas. No conditional use permits for garbage and waste disposal sites shall be issued for Flood Fringe District. There shall be no further encroachment upon the floodplain at existing sites.

62.849 On - site Water Supply and Sewage Treatment Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems and are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

62.850 CONSTRUCTION STANDARDS IN THE FLOODWAY DISTRICT

No structures (temporary or permanent); fill, including fill for roads and levees; deposits, obstructions, storage of materials or equipment; or other uses allowed as Type III Conditional Uses which, acting alone or in combination with existing or future uses, cause any increase in the stage of the 1% chance or regional flood or cause an increase in flood damages in the reach or reaches affected, shall be permitted. Consideration of the effects of a proposed use shall be based on a reasonable assumption that there will be an equal degree of encroachment extending for a significant reach on both sides of the stream. In addition, all floodway conditional uses shall be subject to the regulations in the following paragraphs.

62.851 Fill: Any fill deposited in the floodway shall be no more than the minimum amount necessary to conduct a Type III Conditional Use listed in Paragraph 62.833. Generally, fill shall be limited to that needed to grade or landscape for that use and shall not in any way obstruct the flow of flood waters **or cause any increase in flood elevations**. Such fill or other material shall be protected against erosion by rip-rap, vegetative cover or bulkheading. Dredge spoil sites and sand and gravel operations shall not be allowed in the floodway unless a long term site development plan is submitted which includes an erosion/sedimentation prevention element to the plan.

62.852 Structures: Accessory structures (temporary or permanent) permitted as conditional uses by Paragraph 62.833 shall be subject to the following standards:

- 1) Not designed for human habitation;
- 2) Designed to have low flood damage potential;
- 3) Constructed and placed on the building site so as to offer the minimum resistance to the flood or floodwaters;
 - a) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and
 - b) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
- 5) **Accessory structures shall be structurally dry flood proofed in accordance with the FP-1 or FP-2 flood proofing classifications in the State Building Code. All flood proofed accessory structures must meet the following additional standards as appropriate:**
 - a) **The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls.**
 - b) **Any mechanical and utility equipment in a structure must be elevated to or above the Regulatory Flood Protection Elevation or properly flood proofed.**
- 6) **As an alternative, an accessory structure may be internally/wet floodproofed to the FP3 or FP4 floodproofing classifications in the State Building Code provided the accessory structure constitutes a minimal investment and that does not exceed 500 square feet for the outside dimension at ground level. Designs for meeting this requirement must either be certified by a registered professional engineer or meet or exceed the standards of subpart 4 and also the**

following criteria. To meet this requirement, detached garages must be used solely for parking of vehicles and limited storage.

- a) To allow for the equalization of hydrostatic pressure, there must be a minimum of two “automatic” openings in the outside walls of the structure, with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
- b) There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.

62.853 Utilities, Railroad Tracks, Streets, and Bridges: Public utility facilities, roads, railroad tracks, and bridges within the floodway district shall be designed to minimize increases in flood elevations and shall be compatible with local comprehensive flood plain development plans. Such facilities must comply with 62.850. Protection to the flood protection elevation shall be provided where failure or interruption of these public facilities are essential to the orderly functioning of the area. Where failures or interruption of service would not endanger life or health, a lesser degree of protection may be provided for minor or auxiliary roads, railroads or utilities.

62.854 Storage of Material and Equipment: The storage or processing of materials that are in time of flooding buoyant, flammable, explosive or which could be injurious to human, animal or plant life, or that are likely to cause pollution of waters, as defined by Minnesota Statutes, Section 115.01, if subject to floating, is prohibited.

62.855 Garbage and Solid Waste Disposal: No conditional use permits for garbage and waste disposal sites shall be issued for floodway areas. There shall be no further encroachment upon the floodway at existing sites.

62.856 Structural Works for Flood Control: Structural works for flood control such as levees, dikes, floodwalls, and reservoirs shall be allowed only upon issuance of a Type III Conditional Use Permit, and compliance with the following:

- 1) Any proposed structural work, which will change the course, current, or cross-section of the waters shall be subject to the provisions of Minnesota Statutes, Section 103G.245, and other applicable statutes.
- 2) When necessary, a permit from the Army Corps of Engineers certifying compliance with Section 404 of the Clean Waters Act shall be obtained, along with any other necessary permits.

62.857 On - site Water Supply and Sewage Treatment Systems: Where public utilities are not provided: 1) On-site water supply systems must be designed to minimize or eliminate infiltration of flood waters into the systems and are subject to the provisions in Minnesota Rules Chapter 4725.4350, as amended; and 2) New or replacement on-site sewage treatment systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, they must not be subject to impairment or contamination during times of flooding, and are subject to the provisions in Minnesota Rules Chapter 7080.2270, as amended.

62.860 CONSTRUCTION STANDARDS IN THE FLOOD PRONE DISTRICT

The requirements applicable in the Flood Fringe District, as defined in Section 62.840 shall apply in the Flood Prone District and, in addition, the deposition of any fill or spoil from dredging of sand and gravel operations, the construction of any structure, or the grading or paving of any areas shall require certification by a registered professional engineer or hydrologist that the following conditions have been met:

- 1) Fill deposited in the Flood Prone area shall be no more than the minimum amount necessary to conduct the use.
- 2) No net loss of capacity for surface storage of flood waters shall result from the activity.
- 3) The effect of such activities in the Flood Prone area shall not result in an increase in erosion potential on the site. The erosion control measures must conform to all city engineering standards.

62.870 MANUFACTURED HOMES, RECREATIONAL VEHICLES IN THE FLOOD PLAIN

Manufactured homes and manufactured home parks and the placement of recreational vehicles in flood plain areas must meet the following requirements:

62.871 Manufactured Home Parks and Subdivisions: New manufactured home parks and expansions to existing mobile/manufactured home parks are prohibited in any floodplain district.

62.872 Placement: Placement or replacement of manufactured home units is prohibited in the Floodway District. In the Flood Fringe and Flood Prone Districts, placement or replacement of new or replacement manufactured homes in existing manufactured home parks or on individual lots of record will be treated as new structures and may be placed only if in compliance with Section 62.800.

- 1) All manufactured homes must be securely anchored to an adequately anchored foundation system that resist flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state or local anchoring requirements for resisting wind forces.
- 2) If vehicular road access for preexisting manufactured home parks is not provided in accordance with Section 64.123, then replacement manufactured homes will not be allowed until the property owner(s) develops a flood warning emergency plan acceptable to the zoning administrator.

62.873 Recreational Vehicles: New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Placement of recreational vehicles in existing recreational vehicle parks or campgrounds in the floodplain must meet the exemption criteria below or be subject to the provisions of this section and as specifically spelled out in Section 62.874.

- 1) **Exemption:** Recreational vehicles are exempt from the provisions of this section if they are placed in an existing recreational vehicle park or campground and, further, they meet the following criteria:

- a) Have current licenses required for highway use.
- b) Are highway ready meaning on wheels or the internal jacking system are attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks, and the vehicle has no permanent structural type additions attached to it.
- c) The vehicle and associated use must be permissible in any preexisting, underlying zoning district.
- d) Accessory structures are not permitted within the Floodway District. Any accessory structure in the Flood Fringe and Flood Prone Districts must be constructed of flood-resistant materials and be securely anchored, meeting the requirements applicable to manufactured homes in Section 62.872.

62.874 Additional Development: Recreational vehicles exempted in Section 62.873 lose this exemption when development occurs on the parcel exceeding \$500 for a structural addition to the vehicle or an accessory structure such as a garage or storage building. The vehicle and all additions and accessory structures will then be treated as a new structure and shall be subject to the elevation/flood proofing requirements and the use of land restrictions specified in Section 62.800 of this ordinance.

62.875 New Travel Trailer Parks: This section removed; see 62.873

62.880 VARIANCES TO THE FLOOD DISTRICT REGULATIONS: Removed and placed in Chapter 60

CHAPTER 65

65.360 NONCONFORMING USE CREATED BY FLOOD DISTRICT REGULATIONS:

Except as may be provided by federal rules and regulations, the modification, expansion or termination of a nonconforming use created by flood district regulations, where the structure is conforming, is subject to this chapter. Any expansion, modification or reconstruction shall not increase the flood damage potential of the use or structure and, if located in a floodway, shall not increase the degree of obstruction to the flood flow.

65.440 NONCONFORMING STRUCTURE CREATED BY FLOOD DISTRICT REGULATION:

Subdivision 1. A lawful nonconforming use, structure or occupancy created by flood district regulations may be continued in the same manner as other nonconformities subject to the following additional standards that are necessary to protect the public health, welfare or society. Historic structures, as

defined in Section 60.200 of this ordinance, are subject to the provisions of Sections A through I of this ordinance.

- A. A nonconforming use, structure, or occupancy must not be expanded, changed, enlarged, or altered in a way that increases its nonconformity. Expansion or enlargement of uses, structures or occupancies within the Floodway District is prohibited.
- B. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use must be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in C and D below.
- C. Whenever any alteration, addition or repair to a nonconforming structure exceeds 50 percent of its current market value as determined from the records of the Olmsted County Assessor, the entire structure shall be made to conform to all applicable flood plain regulations. This requirement shall also apply at such time the cumulative effect of all additions, alterations or major repairs since the date the structure became nonconforming exceed 50 percent of the current market value.
- D. The alteration, addition or repair to a nonconforming structure, when the value of such work does not exceed 50 percent of its current market value as determined from the records of the Olmsted County Assessor, shall not increase the flood damage potential of the use or structure. Repair of a nonconforming structure, if located in the floodway, shall not increase the degree of obstruction to the flood flow.
- E. Any nonconforming use, or any use of a nonconforming structure, that is discontinued for more than one year, must conform to the floodplain provisions of this ordinance.
- F. If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to this ordinance.
- G. If any nonconformity is substantially damaged, as defined in Section 60.200 of this ordinance, it may not be reconstructed except in conformity with the provisions of this ordinance. The applicable provisions for establishing new uses or new structures will apply depending upon whether the use or structure is in the Floodway, Flood Fringe or Flood Prone Districts, respectively.
- H. If any nonconforming use or structure experiences a repetitive loss, as defined in Section 60.200 of this ordinance, it must not be reconstructed except in conformity with the provisions of this ordinance.
- I. Any substantial improvement, as defined under “substantial improvement” in Section 60.200 of this ordinance, to a nonconforming structure requires that the existing structure and any additions must meet the requirements of this ordinance for new structures.